

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BENEDICT MCGILL

VS.

DAVON L. CARROLL AND ESHAI CORP. D/B/A
COURIER DISTRIBUTION SYSTEMS

NO. 2:18-CV-02635

ORDER

AND NOW, this day of , 2019, it is hereby **ORDERED** and **DECREED**, that Plaintiff, Benedict McGill, shall appear for deposition within twenty (20) days of this Order or suffer the appropriate sanctions, including reasonable attorney fees for the filing of this motion, as well as costs incurred by the cancellation of the deposition, and/or suffer a judgment of Non Pros for failure to be present at a duly noticed deposition. It is further Ordered that the Plaintiff's further failure to be present at the duly noticed deposition will result in the preclusion from testifying at trial or any hearing in this matter.

BY THE COURT:

J.

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DEFENDANTS' MOTION TO COMPEL THE DEPOSITION OF THE PLAINTIFF

Defendants, Davon L. Carroll and Eshai Corp. d/b/a Courier Distribution Systems, by and through their attorneys, Marks, O'Neill, O'Brien, Doherty & Kelly, P.C. hereby move this Honorable Court to enter an Order compelling the deposition of the Plaintiff, and in support thereof, states as follows:

1. Plaintiff filed a Complaint on or about May 22, 2018 against Defendants for personal injuries allegedly sustained by Benedict McGill in an automobile accident.
2. The deposition of Plaintiff was initially scheduled for November 27, 2018.
3. As Plaintiff's counsel was having difficulty locating his client, the scheduled deposition was canceled.
4. After several attempts to get available dates for Plaintiff's deposition, Defendants unilaterally rescheduled Plaintiff's deposition for February 15, 2019.
5. Plaintiff once again canceled the scheduled deposition.
6. Pursuant to the Federal Rules of Civil Procedure 30 (a), Defendants are entitled to the deposition of the Plaintiff.
7. Pursuant to the Federal Rules of Civil Procedure 7 (b)(1), this Court may enter any Order with regard to the Plaintiff's failure to appear for deposition.
8. The discovery deadline in this matter is March 4, 2019.
9. Defendants have been severely prejudiced due to Plaintiff's failure to appear for deposition.

10. The Movant is entitled to Plaintiff's deposition, and seeks an Order of this Court compelling said deposition to occur within twenty (20) days from the date of the Order.

11. Counsel herein certifies that good faith efforts have been made to schedule Plaintiff's deposition.

WHEREFORE, Defendants request this Honorable Court to enter an Order in the form attached, compelling the deposition of the Plaintiff.

MARKS, O'NEILL, O'BRIEN, DOHERTY & KELLY, P.C.

BY: /s/ *Benjamin J. Tursi*
BENJAMIN J. TURSI, ESQUIRE
ATTORNEY FOR DEFENDANTS
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**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO COMPEL THE DEPOSITION OF THE PLAINTIFF**

I. STATEMENT OF THE CASE

Plaintiff, Benedict McGill, filed this suit seeking redress for personal injury alleged to have been suffered by Benedict McGill as a result of an automobile accident which is alleged to have occurred on May 10, 2016.

The deposition of Plaintiff was initially scheduled for November 27, 2018, and then rescheduled for February 15, 2019. Plaintiff canceled the deposition on both occasions.

II. APPLICABLE LAW AND DISCUSSION

The rules regarding a deposition in a civil case in the Eastern District of Pennsylvania are clear:

“A party may take the testimony of any person, including a party, by
deposition upon oral examination without leave of court.”

See, FRCP 30 (a). The sequence and timing of discovery is never an issue unless the Court, upon motion for the convenience of the parties and witnesses, orders otherwise.

When a party fails to comply with discovery requests, the rules of the Eastern District of Pennsylvania are, likewise, clear:

“An application to the court for an order shall be by motion which...shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.”

See, FRCP 7(b)(1). This Court may enter an Order designating all facts to be established by that discovery to be taken as true against the party failing to comply, refuse to allow the disobedient to support or oppose designated claims, strike out the disobedient party or impose punishment for contempt upon that party. In addition, this Court may enter an Order to compel such deposition or any other Order as is just.

In this matter, the Defendants have complied with all applicable rules of discovery, as is evidenced by the Motion and the attempts by defense counsel to schedule depositions at a mutually convenient time. Plaintiff's failure to appear for deposition has hampered Defendants' ability to properly defend this case. Counsel herein certifies that good faith efforts have been made to schedule Plaintiff's deposition.

Defendants have no other recourse than to turn to the Court for intervention.

III. CONCLUSION

For all the foregoing reasons, Defendants seek for this Court to enter an Order in the form annexed compelling the deposition of Plaintiff to occur within twenty (20) days of the date of the signing of the Order.

MARKS, O'NEILL, O'BRIEN,
DOHERTY & KELLY, P.C.

BY: /s/ Benjamin J. Tursi
BENJAMIN J. TURSI, ESQUIRE
ATTORNEY FOR DEFENDANTS
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CERTIFICATION

I hereby certify that on this 28th day of February 2019, a true and correct copy of the attached Motion to Compel was served on all parties of record by electronic filing and/or first class mail, postage pre-paid.

MARKS, O'NEILL, O'BRIEN,
DOHERTY & KELLY, P.C.

BY: /s/ Benjamin J. Tursi

BENJAMIN J. TURSI, ESQUIRE

Attorney for Defendants

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